

KAREN P. HEWITT
United States Attorney
CALEB E. MASON
Assistant United States Attorney
California Bar No. 246653
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-5956
Email: caleb.mason@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Criminal Case No. 08-2385-DMS
)	Date: August 22, 2008
Plaintiff,)	Time: 11 a.m.
)	
v.)	The Honorable Dana M. Sabraw
)	
MICHAEL DOUGLAS MOORE,)	UNITED STATES' NOTICE OF MOTIONS
)	AND MOTIONS FOR:
Defendant.)	
)	(1) RECIPROCAL DISCOVERY
)	(2) LEAVE TO FILE FURTHER
)	MOTIONS

PLEASE TAKE NOTICE that on August 22, at 11 a.m., or as soon thereafter as counsel may be heard, plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E. Mason, Assistant United States Attorney, will move the Court to enter an order granting the following motions.

MOTIONS

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P. HEWITT, United States Attorney, and Caleb E.

1 Mason, Assistant United States Attorney, hereby moves this Court
2 for an order granting the following motions for:

- 3 1. Reciprocal Discovery; and
- 4 2. Leave to File Further Motions.

5 The motions noted above are based on the files and records of
6 this case, together with the following statement of facts and
7 memorandum of points and authorities.
8

9 **I**

10 **STATEMENT OF THE CASE**

11
12 On May 15, 2008, defendant Michael Douglas Moore ("Defendant")
13 executed a waiver of indictment, and was charged by Information with
14 one count of importation of marijuana in violation of 21 U.S.C.
15 sections 952 and 960. On July 17, 2008, a federal grand jury in the
16 Southern District of California returned a two-count Indictment
17 charging Defendant with: (i) importing approximately 51.03 kilograms
18 (112.26 pounds) of marijuana into the United States in violation of
19 21 U.S.C. sections 952 and 960; and (ii) possessing approximately
20 51.03 kilograms (112.26 pounds) of marijuana with intent to distribute
21 in violation of 21 U.S.C. Section 841(a)(1). Defendant was arraigned
22 on the indictment on July 21, 2008.
23

24 **II**

25 **STATEMENT OF FACTS**

26 **A. DEFENDANT'S APPREHENSION**

27 **1. Primary Inspection**

28 On April 18, 2008, at approximately 3 p.m., Defendant entered the
United States at the Andrade Port of Entry as the driver and sole

1 occupant of a 1995 bronze-colored Nissan Pathfinder bearing California
2 licence plates. During primary inspection, Customs and Border
3 Protection Officer (CBPO) James Williams noticed that Defendant was
4 very talkative and appeared nervous. Defendant made a negative
5 declaration. He stated that he did not want to go to Mexico and "just
6 wanted to leave the area." Officer Williams referred Defendant and
7 the vehicle to secondary.

8 **2. Secondary Inspection**

9 In the secondary lot, Officer Michael Medley screened the vehicle
10 with his narcotics detector dog, "Blackjack." The dog alerted to the
11 rear of the vehicle. Upon closer inspection, officers discovered a
12 total of 24 packages concealed inside all four tires of the vehicle.
13 One of the packages was probed and a sample of a green leafy substance
14 was obtained which field tested positive for marijuana. The 24
15 packages had a combined weight of approximately 51.03 kilograms
16 (112.26 pounds).

17 **B. DEFENDANT'S STATEMENT**

18 Defendant was advised of his Miranda rights and waived them. He
19 made a statement which was witnessed by Special Agents Enrique
20 Torregrosa and Lance Swanson of Immigration and Customs Enforcement
21 (ICE). The statement was not recorded because recording devices were
22 temporarily unavailable at the Andrade POE due to ongoing remodeling
23 and construction.

24 Defendant stated that he lived in Downey, California, and that
25 a recent back injury prevented him from working. His next-door
26 neighbor, one Jorge, told him about an opportunity to make \$3000
27 driving a load of marijuana from Andrade to Downey. He accompanied
28 Jorge to Mexicali in Jorge's vehicle, where he was introduced to one
"Cooper" or "Cuba," who was the supplier of the marijuana.

1 Defendant agreed to cross the vehicle for \$3000. His
2 instructions were to drive to Downey and then call Jorge, who would
3 pay him. Jorge crossed directly ahead of Defendant at the POE.
4 Defendant knew the contraband was in the tires because the vehicle
5 handled poorly when he drove it.

6 After Defendant's interview was completed, the ICE agents
7 obtained a portable recording device. While Defendant was being
8 transported from the POE to the Imperial County Jail, he made a series
9 of statements that were recorded by ICE Special Agent Lance Swanson.
10 Agent Swanson re-Mirandized Defendant before asking him any questions.
11 Defendant reiterated that he understood his rights and wanted to
12 cooperate. In the statement, he reiterated that he had come Mexicali,
13 with his neighbor Jorge, to make \$3000 driving a load of marijuana to
14 Downey, CA. He reiterated that he knew there was marijuana in the
15 vehicle both because he had agreed to drive a load of marijuana and
16 because the vehicle was very difficult to drive due to the contraband
17 in the tires.

18 III

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 A. MOTION FOR RECIPROCAL DISCOVERY

21 The United States hereby requests Defendant deliver all
22 material to which the United States may be entitled under Fed. R.
23 Crim. P. 16(b) and 26.2.

24 1. Defendant's Disclosures Under Fed R. Crim. P. 16(b)

25 The United States has voluntarily complied and will continue
26 to comply with the requirements of Fed. R. Crim. P. 16(a). As of
27 the date of this Motion, the United States has produced 109 pages
28 of discovery and one DVD. As of the date of this Motion, the
United States has not received any reciprocal discovery from

1 Defendant. Therefore, the United States invokes Fed. R. Crim. P.
2 16(b), requiring that reciprocal discovery be provided to the
3 United States.

4 The United States hereby requests Defendant permit the United
5 States to inspect, copy, and photograph any and all books, papers,
6 documents, photographs, tangible objects, or make copies of
7 portions thereof, which are within the possession, custody or
8 control of Defendant and which Defendant intends to introduce as
9 evidence in her case-in-chief at trial.

10 The United States further requests that it be permitted to
11 inspect and copy or photograph any results or reports of physical
12 or mental examinations and of scientific tests or experiments made
13 in connection with this case, which are in the possession or
14 control of Defendant, which she intends to introduce as evidence-
15 in-chief at the trial, or which was prepared by a witness whom
16 Defendant intends to call as a witness. Because the United States
17 will comply with Defendant's request for delivery of reports of
18 examinations, the United States is entitled to the items listed
19 above under Fed. R. Crim. P. 16(b)(1). The United States also
20 requests that the Court make such order as it deems necessary under
21 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United
22 States receives the discovery to which it is entitled.

23 **2. Witness Statements Under Fed. R. Crim. P. 26.2**

24 Fed. R. Crim. P. 26.2 requires the production of prior
25 statements of all witnesses, except a statement made by Defendant.
26 Fed. R. Crim. P. 26.2 requires reciprocal production of statements,
27 in accordance with the Jencks Act.

28 The timeframe established by Fed. R. Crim. P. 26.2 requires
the statement to be provided after the witness has testified. In

1 order to expedite trial proceedings, the United States hereby
2 requests Defendant be ordered to supply all prior statements of
3 defense witnesses by a reasonable date before trial to be set by
4 the Court. Such an order should include any form in which these
5 statements are memorialized, including but not limited to, tape
6 recordings, handwritten or typed notes and/or reports.

7 **C. MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

8 Should new information or legal issues arise, the United States
9 respectfully requests the opportunity to file such further motions as
10 may be appropriate.

11
12 **IV**

13 **CONCLUSION**

14 For the foregoing reasons, the United States requests the Court
15 grant the United States' Motions for Fingerprint Exemplars, Reciprocal
16 Discovery and Leave to File Further Motions.

17 DATED: August 13, 2008

18 KAREN P. HEWITT
19 United States Attorney

20 /S/ Caleb E. Mason
21 CALEB E. MASON
22 Assistant United States Attorney
23 Attorneys for Plaintiff
24 United States of America
25 Email: caleb.mason@usdoj.gov
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 08-2385DMS
Plaintiff,)
v.) **CERTIFICATE OF SERVICE**
MICHAEL DOUGLAS MOORE,)
Defendant.)
_____)

IT IS HEREBY CERTIFIED THAT:

I, CALEB E. MASON, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of:

UNITED STATES' NOTICE OF MOTIONS AND MOTIONS FOR:

- (1) **RECIPROCAL DISCOVERY; AND**
(2) **LEAVE TO GRANT FURTHER MOTIONS**

on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

John Ellis, Esq.
Federal Defenders of San Diego, Inc.
Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 13, 2008.

s/ Caleb E. Mason
CALEB E. MASON